

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CRS RECOVERY, INC., a Virginia
corporation; and DALE MAYBERRY,

Plaintiffs,

v.

JOHN LAXTON, aka
johnlaxton@gmail.com; and
NORTHBAY REAL ESTATE, INC.,

Defendants.

No. C 06-7093 CW

ORDER REGARDING
DEFENDANT NORTHBAY
REAL ESTATE,
INC.'S MOTION TO
DISMISS

On June 12, 2007, this Court set the deadline for hearings on dispositive motions in this case as February 28, 2008. See Docket No. 34. After being extended once by the parties' stipulation, the deadline was extended by Court order to September 4, 2008. Docket Nos. 73, 102. The Clerk issued a notice continuing the hearing to September 18, 2008. Docket No. 147. On September 18, 2008, the Court heard the parties' cross-motions for summary judgment and subsequently granted Plaintiffs' motion and denied Defendants' motion. Docket Nos. 168, 170. On appeal, the Ninth Circuit determined that Defendants had raised disputed issues of material fact and reversed in part the Court's grant of summary judgment to Plaintiffs. Docket No. 203.

On July 13, 2010, the Court held an initial case management conference following the remand. On December 6, 2011, the Court held a further case management conference and set a final pretrial conference for April 25, 2012 and a jury trial to start May 7, 2012. At neither of those case management conference did the

1 parties request, or the Court grant, an extension of the deadline
2 to hear dispositive motions.

3 On March 20, 2012, Defendant Northbay Real Estate, Inc. filed
4 a motion to dismiss Plaintiffs' claims pursuant to Federal Rule of
5 Civil Procedure 12(b)(1) and noticed its motion for hearing on
6 April 26, 2012, the day after the final pretrial conference is to
7 be held. Defendant has not sought the Court's permission to do so
8 and has not offered good cause to modify the scheduling order
9 under Rule 16(b). See Federal Rule of Civil Procedure 16(b)(4)
10 ("A schedule may be modified only for good cause and with the
11 judge's consent.").

12 Accordingly, within two days of the date of this Order,
13 Northbay Real Estate shall file an administrative motion seeking
14 an extension of the deadline to hear a dispositive motion and
15 demonstrating good cause to do so under Rule 16. Plaintiffs'
16 opposition to Northbay Real Estate's administrative motion, if
17 any, shall be filed within three days thereafter. If Northbay
18 Real Estate fails to comply with the terms of this Order, their
19 motion to dismiss will be denied. The current briefing schedule
20 on the motion to dismiss remains in effect. The hearing on the
21 motion to dismiss shall take place alongside the final pretrial
22 conference on April 25, 2012 at 2:00 p.m.

23 IT IS SO ORDERED.

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25 Dated: 3/23/2012

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CLAUDIA WILKEN
United States District Judge